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LOCAL GOVERNMENT IN PRUSSIA. I.

PRINCE BISMARCK'S influence on the foreign policy of Germany has been so great and the military triumphs of his administration have been so startling as to have chiefly attracted and almost absorbed the attention of foreign observers of German affairs. Little is known by the ordinary student regarding Bismarck's policy in the internal affairs of Prussia; and yet, notwithstanding his enormous labors in other directions, his ceaseless energy has found wide and fruitful field for action in the undramatic details of local government. He has left as lasting an impression on the organization of the Prussian administrative system and on Prussian administrative law as on the map of Europe; and Prussia is called upon to thank him, notwithstanding his reputed love of bureaucratic government and lack of sympathy with popular autonomy, for a greater share of local independence than is granted to most German or even to most European states. Amid the stirring events of the last quarter of a century there has been completed under his direction one of the most notable administrative reforms that the world has ever been called upon to witness—a reform which has in view the social regeneration of the Prussian state, the realization of the social aims of the French revolution, and the formation of a system of administration which shall make it difficult for any one class of society to employ its powers of government for purely selfish ends. This reform has been remarkable not only for the loftiness of its purpose, but also for the fact that, though brought to a successful completion by the foremost political figure of the present time, it does not owe its inception to him or to the influence of contemporaneous political thought, but was sketched out three-quarters of a century ago by one of the greatest of Prussian statesmen—Baron Stein. The reform initiated by Stein languished for many years, but the impulse he gave was great enough finally

to overcome all obstacles and to cause the incorporation of his ideas into the Prussian administrative system. Stein's ideas of government were not evolved out of his inner consciousness. A close student of the law of other countries, he was able to formulate a plan of administration that was founded on experience. His ideas were obtained from a careful consideration of the great French revolution and from a complete knowledge and understanding of the political and social conditions which had brought it about and of the results by which it was attended.

In order to understand the great reform which owes its name as well as its origin to Stein, it will be necessary to consider briefly the condition of Prussia when he came into office. Not only is such a consideration necessary to understand what Stein did for Prussia; it will also be interesting to the general student of political institutions, since the internal history of Prussia is a most striking illustration of the influence which an administrative system may exert on the people of a country. No other bit of history brings out so clearly the presence of that everlasting conflict between social classes which it is the duty of the administrative system to bring to an end; no other reform shows us so well how to reconcile apparently irreconcilable social interests.

I. History of Prussian Local Government since 1807.

I have chosen the year 1807 as the starting point in this historical sketch, because it was then that a really modern Prussia came into being. The Prussia of previous times was feudal rather than modern; and in 1807 feudal Prussia came to a humiliating end, and modern Prussia began to lay the foundations of that extraordinary career of prosperity which has brought her from comparative obscurity to the foremost place in modern Europe.

In 1806 the battles of Jena and Auerstadt brought the Hohenzollerns to the feet of the conqueror of Europe. After the news of Napoleon's victories had spread over the country, army after army laid down its arms without striking a blow for the

fatherland, and one after another the strong places of Prussia opened their gates to the forces of the invader. All hopes of Russian aid were blasted by the French victories of Eylau and Friedland, soon followed by the peace of Tilsit. Seldom has it fallen to the lot of any nation to suffer such humiliation as did Prussia by this famous treaty. Half of her territory was taken from her, and what remained was little more than a subject part of the great French empire, then at almost the height of its power. Such was the end of feudal Prussia. Her collapse was so sudden and so complete as to prove beyond a peradventure that the magnificent fabric reared with so much pains by the great Prussian kings rested on most insecure foundations. The victories of the French were not really so overwhelming as to offer sufficient explanation for the universal panic of her people. The resources of Prussia were not so utterly exhausted as to make all further resistance hopeless. The causes of her fall are to be found in the moral deficiencies of her citizens: their insensibility to loyal feeling and their deafness to the call of patriotic duty.¹ These deficiencies were in great part the result of unsound social and political conditions. The Prussian administrative system was cumbrous and inefficient, and the social relations of the people were such as almost to preclude the possibility of any harmony of action between the various classes.

The administrative system was one which had come down from the time of Frederick William I. It was bureaucratic to the last degree, entrusting the management of almost all matters of importance to appointed officers who had adopted the administration of government as a profession and who acted under a complete central control. Only the influential classes of the people — *i.e.* the large landholders, the nobility — had any powers, and their powers were limited to purely local matters and were exercised under the never-ceasing and all-

¹ Typical of the time was the celebrated proclamation issued by the governor of Berlin after the battle of Jena: "The King has lost a battle. The first duty of the citizen is to keep quiet." ("Der König hat eine Bataille verloren. Die erste Bürgerpflicht ist Ruhe.") Bornhak, *Geschichte des preussischen Verwaltungsrechts*, Bd. III, S. 3.

embracing supervision of the bureaucracy. Unimportant as this measure of self-government was, it had influence for evil rather than for good, since so much of the feudal régime existed in the localities that local self-government in the interest of any but the great landholders was impossible. Not only was the government bureaucratic in the extreme, but the organization of the administrative system was itself most faulty. Originally in the hands of Frederick William I. a most effective instrument of administration, it had degenerated, like most bureaucratic systems, in the hands of less able men. Too centralized to act in the interest of the localities when not wisely guided it was also too closely wedded to routine to adapt itself to changing conditions and too much given up to red tape to act with any promptness.¹ And this faulty government had much more to do than is now thrown on any administrative system; for the making of laws as well as their administration and the decision of many matters of a judicial character were in the hands of the official classes. All legislation consisted of royal decrees issued by the king, subject to no control save that exercised over him by his official advisers; and the public law contained no clear distinction between the judicial and the administrative or executive powers. The result of such conditions was that the people participated hardly at all in the government and administration of the country and therefore not only lost all political capacity but also came to regard the government either with indifference or with absolute hatred.

Finally, while the governmental and administrative system was so faulty and had such an evil influence, the social conditions of the Prussian people were such as to favor one class at the expense of the others and at the same time to impoverish the country as a whole. The distinctions of class were so fixed, as a result, among other things, of the Frederician Code, as almost to divide the people into castes. The laboring classes were crushed down under enormous burdens by the nobility in the rural districts and by the rich bourgeoisie in the cities; and artificial barriers placed about the freedom of commerce

¹ Meier, *Die Reform der Verwaltungsorganisation*, I. Abschnitt.

and labor in the interest of the richer classes prevented all classes alike from making the best use of the powers they possessed.

Such were the internal weaknesses that made Prussia an easy prey to Napoleon. But while its humiliation was great, its regeneration was near at hand. Baron Stein was called to the head of the administration in 1807, and during the one year of service from which he was finally driven by the influence of Napoleon he was the director of the policy of Prussia and may well be regarded as the founder of the Prussia of to-day. During this short time of service he formulated and published his general plan of government;¹ and, although unable to secure the adoption of this plan in the entire country, he left to his successors a model to follow in his great municipal corporations act of 1808. Besides this he was able to abolish serfdom, to make it possible for those not of noble blood to acquire and hold land² and to introduce great and needful changes in the administrative system itself.³ His actual work is not therefore to be despised and can be regarded as small in amount only when compared with his aims.

Stein's concrete model of administration was the English system as at that time existing. It was only with considerable modifications, however, that he intended to introduce it. Thus he decided to retain, in a modified form, the existing Prussian bureaucracy, in order to prevent the noble landholding classes from selfishly abusing the powers he contemplated giving them⁴ and in order to carry out the social reforms which he had

¹ What Stein's ideas of government were may be seen from that famous document which the Germans have christened Stein's "political testament." This document was the circular which Stein sent to the officers of the administration when he bade them farewell on the occasion of his expulsion from Prussia by Napoleon. The reforms which he advocated therein were the abolition of hereditary magistracy, very common in some parts of the kingdom, and the transfer of all judicial and police functions to officers appointed by the king; the formation of a national legislature; and the establishment, not of the right only, but of the duty of all property-owning classes to participate both in the administration and legislation of the state. This last principle (of obligatory service) was realized in Stein's municipal corporations act of 1808. Cf. Bornhak, *Bd. III*, S. 4, where a portion of the text of the "testament" is published.

² Edict Oct. 9, 1807.

³ Ordinance Dec. 26, 1808.

⁴ Meier, S. 240.

already initiated. But his expulsion from office at the instance of Napoleon prevented him from conferring upon the nobility any powers of local government — and, in fact, from establishing any general system of local government whatever. It is very doubtful whether his ideas were capable of realization at that time; for when put in practice by the Dohna-Altenstein ministry (which both succeeded to his place and adopted his plans) they met with no success whatever.¹ The social conditions seem to have been too unfavorable. Long bureaucratic rule had too far weakened the political capacity of the people, and the pecuniary dependence of the poorer upon the richer classes made the exercise of local power in the interest of any but the richer classes difficult if not impossible.

The failure of Stein's immediate successors brought to the front Hardenberg, who became chancellor in 1810. His name becomes closely associated henceforth with that of Stein: the reform as a whole is commonly known as the Stein-Hardenberg reform. But in reality the immediate purposes of these statesmen were quite distinct, and with Hardenberg's accession to power the direction of the movement changes.² While Stein made local self-government (*i.e.* administration by the people) his aim and end, Hardenberg was determined to subordinate administration to the position of a means to an end, and that end was the freeing the individual from the restraints and restrictions which had come down from the feudal, the guild and the mercantile systems. He wished to make a practical application in Prussia of the *laissez-faire* principles of Adam Smith, with whose works he was well acquainted and for whom he had a great admiration. He believed that the bases for such a system of self-government as Stein desired must be found in a state of society different from that then existing in Prussia; that the first thing to be done even in order to attain the ends aimed at by Stein was to change existing economical and social

¹ This failure, it must be admitted, was in part due to the character of Count Dohna, who always found it difficult to make any decision. Meier, S. 162 ff.

² Bornhak, III, S. 6. Cf. also Meier, S. 135, 170-172; and Seeley, Life and Times of Stein, *passim*.

conditions. To do this in a state in which the administration was everything, as it then was in Prussia, he believed that it was necessary to have under his control a highly centralized and easily directed administrative system, of a character totally opposed to that of decentralized self-governing England for which Stein had such a longing. Hardenberg had before his eyes a concrete example of such a system, *viz.* the administrative system of France—a system which not only conformed with his idea of what was necessary but which also had been formed for the express purpose of accomplishing for France what he wished to accomplish for Prussia. In France it had served its purpose, and it was only natural for Hardenberg to believe that what had been done in France might be done with a similar instrument for his own country. Stein wished to introduce into Prussia the English justice of the peace and parish constable; Hardenberg had a leaning towards the French prefect and sub-prefect with their attendant *gendarmerie*.¹ Hardenberg, however, did not succeed in overturning what Stein had already done; although he did actually introduce the French *gendarmerie*, for whose duties Stein had made no provision.

Stein had divided the country into what were known as “government districts” (*Regierungsbezirke*) at the head of each of which was placed a board of officers called the “government” (*Regierung*).² This authority had charge of almost all affairs of the central administration which in the nature of things could be attended to in the localities, while purely local matters were left in the management of the cities and of the rural communities under the supervision of the “governments.” Hardenberg suffered this organization to remain as it was; but in order to increase his influence over it, he put every two or three districts under a governor, or “superior president” as he was called, who was the representative of the central government in the province.³ Further, the existing circle organiza-

¹ Meier, S. 169 ff. Hardenberg in fact drew up a cabinet order (Aug. 1, 1812) providing for a prefect in the district and a sub-prefect in the circle. This order was never enforced.

² Ordinance Dec. 26, 1808.

³ Ordinance April 30, 1815.

tion was retained. Each "district" was divided into circles, or rather a historic Prussian division of the country into circles was retained, with the necessary modifications; and at the head of each of these circles a historic Prussian officer (the *Landrath*) was allowed to remain though now he was placed in the strictest subordination to the "governments."¹ All of these authorities, the governor, the "government" and the *Landrath*, were placed under the direction of the chancellor, which last position Hardenberg himself assumed. All the officers of this administrative system, with perhaps the exception of the landrath, were professional in character—that is, they were salaried officers and devoted their entire time to their work, for which they were obliged to pursue a long preparatory course of study and a practical apprenticeship. The system was thus as before a centralized bureaucracy. But it was better organized than before; and it was directed by a man of advanced liberal ideas, who made use of the vast power he possessed to further the interests of the state as a whole and not those of any single class. With this wonderfully efficient instrument great progress was made in carrying on the economical reforms begun by Stein. The privileges of the guilds were either bought up or taken away by law, and trade was freed from their restrictions.² All internal taxes in the nature of customs which hindered the pursuit of commerce were repealed,³ and a most important step was taken towards the future unification of Germany by the formation of the "customs union." Feudal privileges soon followed the privileges of the guilds,⁴ and the iniquitous tax system of the old régime was for the most part replaced by a uniform and proportional system.⁵ The only exception to this tax reform was to be found in the land tax, which remained in very much the same state as before. The

¹ The circle organization was extended over the whole kingdom by the *Gen-darmerie* edict of July 30, 1812. The ordinance of July 30, 1815, put a *Landrath* at the head of each circle.

² See, e.g., edict Oct. 28, 1810.

³ Laws May 26, 1818, and Feb. 8, 1819.

⁴ Edict Sept. 14, 1811.

⁵ The general plan was elaborated in the law of May 30, 1820.

exemptions from the land tax recognized by the old laws were too widespread and of too long a standing to admit of any great modification at that time.

But before this great reform could be completed, Hardenberg died (1822); and the most powerful of the social classes against which it had been directed — the great landholders — again came to the front and took advantage of the reaction which naturally sets in after any period of progress. Though much weakened by the reforms already accomplished, the privileges still belonging to them gave them great social power and naturally therefore great political influence; and they succeeded finally in persuading the king that the basis of the royal power was to be found in a loyal and powerful nobility and that it was a great mistake for him to allow their prerogatives to be so much curtailed. By effecting a union with the bureaucracy, which had been disorganized by the death of Hardenberg, they arranged a partition of the field of government: the nobility to take the sphere of local government, the bureaucracy to content itself with the management of the affairs of the state at large. There were therefore formed in all the provinces and circles of the kingdom local legislative and administrative bodies called “*estates*,” in which the predominant influence was given to the large landholders.¹ At the same time greater power in municipal matters was given to those nobles on whose estates cities had grown up, and the cities themselves were placed under a stricter central control.² After the accession of Frederick William IV the nobility went a step further. They persuaded the king to form a legislative body for the whole land, composed of representatives of the local legislative bodies and called the United Diet.³ By means of this body, which they controlled, the landholding class against whom the reforms had been directed again obtained control of the country. They did not scruple to make use of their power to block a further reform which was most

¹ Law June 5, 1823.

² This was done by the revised municipal corporations act of 1831.

³ Patent and ordinance Feb. 3, 1847.

necessary but which would have injured them in the same proportion that it would have benefited the other classes of the community — *i.e.* the reform of the land tax, which was demanded with great vehemence by all other classes. But the nobility had forgotten that their power in the community was not at this time what it had once been. In Prussia as in England the nineteenth century ushered in great social changes. The industrial development that began in this century and the long peace that followed the revolutionary and Napoleonic wars had favored the accumulation of a vast amount of personal property. The industrial and commercial classes thought that the power which they possessed in the affairs of every-day life was not sufficiently recognized in the governmental system; and the refusal by the nobility of their just demands for recognition led to the revolutionary events of the year 1848. The revolution of that year was really little more than a protest on the part of the possessors of personal property, *i.e.* the mercantile and manufacturing classes, against the monopoly of governing enjoyed by the possessors of large estates in land, *i.e.* the nobility. In consequence of this revolution the king granted to the people a constitution.¹ In that this constitution made provision for a legislature to be formed by electors possessing a certain amount of property, — not necessarily landed property but any kind of property, — an opportunity was given to the possessors of capital to make their influence felt and to introduce by means of legislation the reforms which they desired. This they were not slow in doing: within a few years nearly all the privileges that were still attached to the possession of landed property were completely swept away. Land was made completely alienable by the agrarian legislation of the years 1848–50; and manorial courts, which existed in large numbers in the eastern provinces of Prussia, were abolished.² The possessors of personal property were given an influence in the government of the localities equal to (if not

¹ Dec. 5, 1848. This constitution was amended by the legislature for which it provided; was promulgated in its amended form January 31, 1850; and is still the organic law of Prussia.

² Ordinance Jan. 2, 1849.

greater than) that of the possessors of landed property ; for both the municipal and the rural localities received a substantially similar administrative organization with a similar property qualification.¹ Finally, many of the inequalities of the land tax were done away with and a long-desired reform partially accomplished.²

In their first flush of triumph the Liberal party made too selfish a use of the powers from whose exercise they had so long been shut out and laid themselves open to the same reproaches that had been cast against the Conservative party in the preceding period ; and again the inevitable reaction set in. The nobility, against whom the laws of the new legislature had been directed, persuaded many of the Liberals that the new legislation had been too regardless of private rights and that the only safety of the property-owning classes lay in their union over against the poorer classes, who naturally formed the most radical elements of the Liberal party, and who had begun to make demands for the redress of their peculiar grievances. A coalition was formed, which finally got control of the legislature and immediately proceeded to undo much of what had been done by the Liberals in their brief lease of power. The new majority, however, was not content simply to use the legislative power of the country to redress the grievances of the previous period ; they determined to secure the permanent supremacy of their interests. To do this it was necessary to control the administration and at the same time to reorganize somewhat the legislature itself. The control of the administration was of the greatest importance on account of the rôle it played in the state. The bureaucracy established by Hardenberg not only discharged almost all important administrative functions but also controlled what few organs of local government were in existence. The necessary control of the administration could be secured by controlling the bureaucracy. This was done, first, by the temporary introduction into the unwritten constitutional law of Prussia of the principle that the ministers of the crown must have the con-

¹ Gemeindeordnung and other laws of March 11, 1850.

² Law Feb. 4, 1850.

fidence of the party in majority in the Diet. That is, the ministers should cease to be the representatives of the crown—the impartial arbiter between the conflicting claims of social classes—and should be the partisan agents of the predominant social class. Secondly, it was made possible for the ministers to remove all the higher administrative officers subordinate to them from active participation in the administration.¹ Since many of the local officers were to be found in this class, the ministers (and through them the predominant political party) had complete control over the administration of the country.

The coalition then proceeded to use the administration to preserve their majority in the lower house of the Diet. The preservation of this majority was thereafter its chief duty.

A question of party was made of the appointment and of the confirmation of appointment of all local officers, of the granting of licenses for hotels and for the sale of liquor, of the granting of passports (which were at the time necessary in order to travel about) and of licenses or permits to build, *etc.* Such powers were made use of in the most bare-faced way to influence parliamentary elections, and the boast was frequently made that one of the advantages of a strong and conservative government was the partisan use of the police force even in the capital, Berlin.²

All that was left now to be done in order to secure the position of the coalition party was to control the House of Lords. This control was obtained by a reorganization of that house in 1853–54, which gave it a permanently reactionary character.³

After securing their position in this way, the reactionary party went energetically to work to reap some of the advantages of power. The field that offered the most abundant harvest was that of local government in the rural districts, since it was there alone that large landed estates were to be found. As has been shown, the capitalistic legislation of the year 1850 had provided for both city and town a very similar administrative organization—similar at any rate as far as the qualifications for suffrage

¹ Law July 21, 1852.

² R. Gneist, *Revue générale du droit et des sciences politiques*, Oct. 1886, p. 265. Cf. Bornhak, Bd. III, S. 256.

³ Law May 7, 1853, and ordinance Oct. 12, 1854.

were concerned. As the basis of voting was simply the possession of property, this legislation had given to the possessors of personal property or capital the same influence in the local government of the rural districts that was possessed by the owners of land. This was felt by the landholders to be unjust ; and the first thing that was done by the reactionary party, when they had sufficiently secured their power, was to change the administrative organization of the open country in such a way as to put its entire control in the hands of the landed interest and for the most part in the hands of the larger owners of land.¹ In the government of the towns the landholders of course had no great interest. All the changes made in the municipal organization were intended simply so to curtail the power of the towns as to take away from the persons of whom they were composed, namely the capitalistic class, the power to interfere with the control that the landed interest had managed to obtain over the general legislation of the country.²

Such was the condition of the Prussian administration under the Conservative party. The reactionary period lasted till about 1860. The entire power of the government was prostituted in the interest of party ; the administrative law was applied in a most partisan way, and class legislation changed the local administrative organization for the benefit of the Conservative party and the landed interest. It must not be supposed that such a misuse of governmental powers was made without a protest on the part of the disorganized Liberal party ; but all attempts at remedying this scandalous condition of affairs had to be suspended in the face of the celebrated constitutional conflict which soon broke out between the new king, William, and the majority in the legislature on the subject of the army appropriations. After this had been settled, the foreign policy of Prussia was so absorbing as to leave little time for the consideration of internal matters. It was only after the formation of the empire that there was opportunity for any movement in the direction of

¹ Law May 24, 1853.

² Gemeindeordnungen May 30, 1853; May 31, 1853; March 19, 1856; May 15, 1856.

reform. The monarchy was then so strong (as the result of the favorable issue of the great conflict with the Diet) that it was able to guide the movement and prevent it from being undertaken, as the previous reforms had been, in the interest of any one class.

The great constitutional conflict — whatever may have been the merits of the claims of the parties to it — had certainly some good results. It taught the Prussian people that the government should be superior to any social influences; and that in a monarchical government the crown is the natural arbiter between the various social classes. The experience of the people was a bitter one, but the lesson was thoroughly learned.

What was needed, according to the opinion of the leaders of the reform, was to introduce into the Prussian administrative system the principle of obligatory unpaid service by the rich and middle classes in police, tax assessment, military and other matters. It was believed that such service would foster public spirit and beget the ability to regard state affairs with other than class feelings.¹ The necessary concrete reform measures were sketched by Dr. Gneist in his little book entitled *Die Kreisordnung*, in which he often referred, as had Stein before him, to the English system which they both knew so well and admired so much. After a long discussion and the preparation of several bills, the plans advocated by Gneist were to a great extent incorporated into the law of December 13, 1872, commonly known as the *Kreisordnung*. The adoption of Gneist's ideas was due to Bismarck, who supported them in the face of the opposition not only of the general public but also of all his colleagues in the ministry and of the greater part of the government officials.²

¹ Gneist, *l.c.* p. 250.

² That Bismarck was heartily in favor of some such system of local government as that of the England of a few years ago, in which power was given to the well-to-do classes in local matters, may be seen from a passage in a report made by him when a member of the Bundestag in the year 1851. Bismarck is there criticising the bureaucratic policy of Prince Schwarzenberg in Austria: "With the phrase 'I can't possibly give all the governors' places to my six imbecile cousins,' Prince Schwarzenberg gets rid of the Austrian aristocracy; to whom, indeed, he should not give places in the state service, but whom he should make useful in the local organization. Instead of

In addition to the *Kreisordnung*, several other laws were passed in the course of the next ten years, all either carrying the reform further or modifying details which experience had shown to be faulty. The definite ends which this reform had in view were :

I. The extension of local self-government.

II. The introduction of a judicial control over the actions of administrative officers.

III. Decentralization, and at the same time the introduction of a non-professional or lay element into the administration of state affairs.¹

The means by which these ends were sought were :

I. A reorganization of the circle and the province as administrative districts for the purposes of general state administration.

II. The organization of administrative courts.

III. The devolution upon the localities of certain services heretofore attended to by the state.

Although the reform was at first introduced into the eastern provinces only,—and not into all of these, since Prussian Poland was excepted,—it was intended for all the twelve provinces. Since 1872 it has been extended by special laws, differing only in minor details from the original laws, into all the western and northern provinces. At the present time, therefore, Prussian Poland (Posen) is the only province which does not enjoy the new privileges of local self-government. The reason of this exception is that the government has not thought it possible, with due regard to the safety of the state, to give the Polish Prussians powers which might be used to its disadvantage. Posen lies upon that boundary of Prussia which is naturally

vivifying and putting to use the rich material for communal and provincial purposes that Austria has in its nobility and city corporations, he shatters it to pieces, to put in its place the subaltern clerk and the gendarme." *Preussen im Bundestage*, IV, 22. Cf. also *Révue générale* (cited above) in which Gneist says: "L'homme d'État qui dirigeait en 1868 les destinées de la Prusse se décida à entreprendre cette œuvre dans ce sens, et ce sera un mérite impérissable du Prince de Bismarck d'avoir été le seul dans un moment critique à maintenir ce point de vue élevé."

¹ De Grais, *Handbuch der Verfassung und Verwaltung*, S. 51.

most exposed, and reaches westward to within about one hundred miles of Berlin. Its people are in race alien to the great body of the Prussian people, and are in feeling notoriously hostile to the government of the Prussian state. It has thus naturally seemed necessary to maintain, for a time at any rate, the Hardenberg bureaucracy, and to allow the localities only very limited powers, exercised always under a strong central control.

II. *General Effects of the Reform.*

The reform has not changed the fundamental administrative divisions heretofore existing, that is, the province, the district and the circle. The twelve provinces are subdivided into government districts, of which there are in the entire monarchy thirty-five. Each district is further subdivided into circles, which are either town or country circles, the town circles being such towns as have over 25,000 inhabitants. These town circles are exempted from the jurisdiction of the rural circle within which they may be territorially situated. There are in all 464 circles, of which thirty-seven are town circles. Below the circle is the *Amtsbezirk*, created by the reform legislation for local police matters. These areas, constructed for what is known in Prussia as the internal administration of state matters, were adopted rather on historical grounds than to suit modern conditions. They are often unevenly and unwisely formed: portions of some of the provinces even lie as enclaves within the limits of others. In certain other administrative branches practical needs have broken through historical precedent, and new areas have been formed. This has produced a further confusion and inconvenience: that of different districts for different purposes. The circle of the reform legislature may or may not be the provincial division employed for the administration of justice or for military or tax matters.¹

¹ Thus, for example, one circle (that of Rinteln) belongs for the purposes of general administration to the province of Hesse-Nassau, for those of justice and military affairs to Hanover, and for those of the indirect tax and postal administration to Westphalia. De Grais, S. 57, Anm. 16.

The complexity of Prussian local government arising from the non-coincidence of the areas employed for different administrative purposes is further increased by the mere existence of so many areas for the single purpose of the administration of internal affairs. The reason is, again, that the Prussian reformers have been forced to have regard to historical considerations. The division of the country into provinces was due to the territorial expansion of the old mark of Brandenburg; each province represents one step in the growth into a state of European importance of what was once simply a district of the old German kingdom. All the provinces, on account of their original connection with other states, had to be treated differently when they were incorporated into the Prussian monarchy. The result, at the time the late reform was undertaken, was that all the provinces had peculiar local institutions — institutions, in many cases, of great vitality. It therefore seemed necessary, while making the general organization more symmetrical and uniform, to retain these provincial institutions in the reformed system. At the same time the official organization adopted by Stein and Hardenberg for the general administration of the internal affairs of the kingdom had proved itself so good that it was felt to be unadvisable to transfer its functions to other authorities. It accordingly seemed necessary to retain both the province and the government district with their respective authorities. At the same time, it seemed desirable and feasible to impose upon the provinces certain duties previously discharged by the central government.¹ The result is that the province is now in the main a municipal corporation, and its authorities attend to matters which in the main interest their province only; while the government district is an administrative district simply (with no juristic personality), and its authorities are concerned with the administration of internal affairs which affect the state as a whole. In general, these two classes of provincial

¹ Thus the care of the main roads was transferred to the provinces. For the discharge of these new duties new resources were supplied, consisting in what the English term "grants in aid," *i.e.* state subsidies. These last amounted in all to about \$7,500,000 a year.

authorities may be said to attend mainly to business affecting the entire state, since the functions of the "governments" in the government districts are really more important than those of the purely provincial authorities. There is a lower class of authorities established mainly for the administration of local matters. These are to be found in the circle, and its subdivision the *amtsbezirk*. The circle has somewhat the same history as the province. Originally established in the days of feudal Prussia for the administration of the taxes which the monarch succeeded in imposing upon his people, the circle authorities became later well recognized members of the Prussian scheme of general state administration and have been preserved (though in a much modified form) by the latest legislation. The functions of the circle are dual in somewhat the same sense as are those of the province, with this difference: that while the duties of the province are mainly state duties, those of the circle are mainly local duties, *i.e.* duties affecting the circle alone. Still, the authorities entrusted with the performance of these two kinds of duties in the circle are not, as in the case of the province, always different, but often the same.

With the province and the circle, the list of the Prussian administrative authorities is about exhausted. The only exception is to be found in the lowest of all authorities, *viz.* those of the communes, rural and urban. The rural communes are so unimportant as to deserve little more than a passing notice, their functions consisting for the most part in the regulation of the purely prudential matters of very small localities; but the urban authorities rise to a great importance, especially in the larger cities, all of which are exempted from the jurisdiction of the circle and are themselves regarded as urban circles. Indeed, Berlin is exempted from the jurisdiction of the province also.

The general principle which has governed the grant of local powers by the legislature is quite different from that in force in the United States. While in this country the rule is to insist upon an express authorization of law for the exercise of any power by municipal corporations, especially by what we term

quasi-municipal corporations such as the counties and rural townships, the Prussian law often makes use of general rather than specific grants. It simply gives the locality the power to regulate its own affairs as it may see fit, without expressing in detail the things which it may do. On account of these wide and general grants of power to local corporations it has been felt to be unsafe to permit them always to do what they may wish within the wide limits of the legislative grant. Therefore there has been formed, in Prussia, an administrative control, which is exercised by the higher over the lower authorities, especially by the central over the purely local authorities. By means of this control (which is almost unknown in our system) the general powers granted by the legislature may often be quite seriously limited when the specific exercise of these powers by a given locality is believed by the superior authority to be unwise. On account of the many degrees in the Prussian administrative system and the number of the authorities in each degree, this system of central administrative control offers as many difficulties both to the student and to the administrator as does the question of areas. All local authorities are under the control of some central authority, the authority with which the control is lodged being determined by the importance of the local authority. Appeals from the lower to the higher authorities are allowed with great freedom. The administrative procedure is thus complicated to the last degree.

Such are the results of the reform in so far as it affects the questions of areas and kinds of authorities and their relations to each other. Another paper will treat of their organization and functions, in the hope of ascertaining how far the main purpose of the reform has been fulfilled, *i.e.* how far the Prussian people enjoy as a result of the reform the privileges of local self-government, how far the new administrative institutions have succeeded in neutralizing the effects of class prejudices and the conflict of social interests.

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